

S-20661A-09-0108 10



BEFORE THE ARIZONA CORPORATI

IN THE MATTER OF: )

WEST MINING AND INNOVATIONS, )  
INC., an Arizona corporation, )AVISON C ("AC") WEST and )  
BARBARA M. WEST, husband and )  
wife, )

Respondents. )

DOCKET NO:  
S-20661A-09-0108

EVIDENTIARY HEARING

At: Phoenix, Arizona

Date: October 1, 2009

Filed:

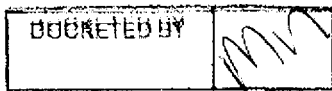
**OCT 19 2009**ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

2009 OCT 19 P 2:07

RECEIVED

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Arizona Corporation Commission

**DOCKETED****OCT 19 2009**

ARIZONA REPORTING SERVICE, INC.

Court Reporting  
Suite 5022200 North Central Avenue  
Phoenix, Arizona 85004-1481

Prepared for:

By: MICHELLE D. ELAM  
Certified Reporter  
CR No. 50637

ACC

**ORIGINAL**

**FOR  
INTERNAL  
&  
INTERAGENCY  
USE  
ONLY**

Pursuant to the contract with Arizona  
Reporting Service all transcripts are  
available electronically for internal  
agency use only.

Do not copy, forward or transmit outside  
the Arizona Corporation Commission.

## 1 INDEX TO EXHIBITS

2	NO.	DESCRIPTION	IDENTIFIED	ADMITTED
3	S-1	Affidavit of custodian of	8	9
4		records signed by Avison		
		Clarence West		
5	S-2	Response to Subpoena for	8	9
6		Documentation Production		
7	S-3a	Articles of dissolution for	8	9
8		West Mining and Innovations,		
		Inc.		
9	S-3b	Articles of Incorporation for	8	9
10		West Mining and Innovations,		
		Inc.		
11	S-4a	Printout titled \$50k Investment	8	9
12		for 100 Pounds of PUnrefined		
		Gold		
13	S-4b	Printout titled Investors Sought	8	9
14		for Gold Projects		
15	S-4c	Not utilized	---	---
16	S-5	E-mails between R. Jackson and	8	10
17		Avison C. West		
18	S-6	Description of "The Project"	8	10
19		from Avison C. West		
20	S-7	Description of "The Vulture Gold	8	10
21		Mine in Wickenburg, Arizona"		
22	S-8	Transcript of Examination Under	8	10
23		Oath of Avison Clarence West		
24		dated May 27, 2009		
25	S-9	Not utilized	---	---
	S-10	Certificates of Non-Registration	8	10
		for Avison C. West and West		
		Mining and Innovations, Inc.		

1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before  
3 the Arizona Corporation Commission in Hearing Room 100  
4 of said Commission, 1200 West Washington Street,  
5 Phoenix, Arizona, commencing at 9:30 a.m. on the 1st  
6 day of October, 2009, before MICHELLE D. ELAM,  
7 Certified Reporter No. 50637 for the State of Arizona.

8

9

10 BEFORE: MARC E. STERN  
11 Administrative Law Judge

12

13

14

15 APPEARANCES:

16

17 For the Applicant:

18 In Propria Persona  
19 By Avison C. and Barbara M. West  
20 1729 East Pony Lane  
21 Gilbert, Arizona 85295

22

23 For the Arizona Corporation Commission,  
24 Securities Division:

25 Mr. Phong (Paul) Huynh  
Staff Attorney, Securities Division  
1300 West Washington Street  
Phoenix, Arizona 85007

26

27

28

1 ALJ STERN: This hearing is now open in the  
2 matter of West Mining and Innovations, Incorporated,  
3 Avison C. West and Barbara M. West, husband and wife,  
4 respondents. Docket number is S-20661A-09-0108.

5 My name is Marc Stern. I'll preside over  
6 this matter.

7 Present on behalf of the Division?

8 MR. HUYNH: Paul Phong, Staff attorney for the  
9 Division, Judge.

10 ALJ STERN: All right. And on behalf of the  
11 respondents?

12 MR. WEST: Ourselves.

13 ALJ STERN: We'll indicate, then, that Mr. and  
14 Mrs. West are present.

15 Mr. West, I believe before you indicated  
16 that you dissolved the corporation; is that correct?

17 MR. WEST: Yes, sir.

18 ALJ STERN: All right.

19 Mr. Huynh, before we start here with  
20 anything, how many witnesses are you planning to call?

21 MR. HUYNH: Two, Your Honor. I anticipate two.

22 ALJ STERN: And are you calling an expert or  
23 anything in regard to your --

24 MR. HUYNH: Yes. We'll be calling Mr. Nyal  
25 Niemuth.

1 ALJ STERN: Okay. At this time, then, are you  
2 wanting to make an opening statement?

3 MR. HUYNH: No, Judge, we'll waive the opening.

4 ALJ STERN: Mr. West, do you want to make any  
5 opening statement?

6 MR. WEST: Yes.

7 ALJ STERN: Sir?

8 MR. WEST: Yes.

9 ALJ STERN: Okay. Mrs. West, do you want to make  
10 a statement at all?

11 MRS. WEST: No. Well --

12 ALJ STERN: We'll let him go first.

13 MRS. WEST: Go ahead and go first.

14 ALJ STERN: Whatever.

15 MRS. WEST: That's fine.

16 ALJ STERN: Go ahead, Mr. West, or do you want to  
17 do it at the end of the Division's case or -- you can  
18 do it now or then.

19 MR. WEST: I'll do it now.

20 ALJ STERN: Okay. Go ahead.

21 MR. WEST: I just feel that everything that has  
22 occurred here, I have a hundred percent clear  
23 conscience that I did nothing wrong, that at no time in  
24 any of the documentation that I received from Mr. Huynh  
25 on any exhibits, anything from any of the ads that I

1 placed that had any actual wordage that said I had ever  
2 attempted to sell, for any amount of money, any  
3 securities in West Mining and Innovations, Inc., and  
4 there was never any intent to sell and there was no  
5 subterfuge at any time. So it was with a clear  
6 conscience that we operated.

7           Once we found out that there was an issue, I  
8 immediately dissolved the corporation. No money was  
9 ever transferred, no investor was ever worked with.  
10 Only one responded that even signed a nondisclosure  
11 agreement, which I'm unsure of the identity. I  
12 think -- I'm assuming it's the investigator from the  
13 Commission using an alias name and an alias address,  
14 even electronically signing the nondisclosure  
15 agreement, which once that was done, any actual  
16 information of the project was transmitted.

17           So at this point, my feeling is that I'm  
18 kind of being singled out because I'm disabled and poor  
19 and I'm an easy target. I hate to have a negative  
20 feeling against the Commission. I find the judge to  
21 have been extremely fair in this matter, but I'm just  
22 speaking from the heart. I feel I've done nothing  
23 wrong.

24           Thank you.

25           ALJ STERN: Okay. Mrs. West, do you have

1 anything you want to say?

2 MRS. WEST: My only concern right now, Your  
3 Honor, is for my husband. He has had a massive heart  
4 attack in December -- I mean in January -- no, December  
5 of 2006. We have been under a tremendous amount of  
6 stress.

7 I think in the past I've told you about my  
8 health problems, and I've been back in the hospital  
9 twice since we were here and he's been back in the  
10 hospital, had major surgery, had a total knee repair --  
11 replacement. He's on a lot of medication, a lot of  
12 pain medication, sedatives to try to keep him calm with  
13 his heart. He's having chest pain. He was having  
14 chest pain this morning before we even got here simply  
15 because we are -- we feel just exactly like he said,  
16 that we have been singled out for some reason and we  
17 don't know how to make it better, how to make it right.

18 ALJ STERN: Okay. Thank you.

19 Anything else, ma'am?

20 MRS. WEST: I don't think so, sir.

21 ALJ STERN: Okay. Mr. Huynh, who are you  
22 intending to call as witnesses in this proceeding  
23 today?

24 MR. HUYNH: We have -- we anticipate we'll call  
25 Mr. Robert Eckert and Nyal Niemuth.



1 ALJ STERN: Okay.

2 MR. HUYNH: Just a couple very brief matters,  
3 Judge.

4 I was speaking to Mr. and Mrs. West prior --  
5 or a little earlier in regards to some records -- or  
6 some housekeeping matters, confirmed, if you will,  
7 that -- will you guys stipulate to the fact that S1,  
8 S2, S3, S3a, S3b, S4a, S4b, S5, S6, S7, and S8 for  
9 admission.

10 MRS. WEST: I thought you said -- I marked S4a.

11 MR. HUYNH: 4c is the one I said that you didn't  
12 provide to us.

13 MRS. WEST: I'm sorry. I marked the wrong one.  
14 So it's 4c?

15 MR. HUYNH: So is that correct?

16 MR. WEST: Is S5 the Robert Jackson -- the R.  
17 Jackson, is that the Robert Jackson --

18 MR. HUYNH: Yes, those are the e-mail  
19 communications.

20 MR. WEST: Yes, we'll stipulate to that.

21 MR. HUYNH: Okay. And then, Judge, I guess I  
22 would -- on S10, I can wait until Mr. Eckert takes the  
23 stand, but S10 is a certified -- or a copy of a  
24 certified document, so we would like to move those in.

25 ALJ STERN: So which documents are you saying

1 that they are stipulating to? S1 through what?

2 MR. HUYNH: S1, 2, 3, 4a --

3 ALJ STERN: Wait a minute.

4 MR. HUYNH: Basically, Judge, everything from S1  
5 through S8 except for S4c.

6 ALJ STERN: All right. So S1 through S4b you're  
7 stipulating to, Mr. West?

8 MR. WEST: Yes.

9 ALJ STERN: Okay. Exhibits S1 through S4b are  
10 admitted as exhibits.

11 (Exhibit Nos. S1 through S4b were admitted  
12 into evidence.)

13 ALJ STERN: S4c, we'll wait until you get to it.

14 How about S5, 6, 7, 8, et cetera?

15 MR. HUYNH: Yes, Judge, it's part of the  
16 stipulation.

17 MRS. WEST: Except 9 and 10.

18 MR. WEST: We're not there.

19 MR. HUYNH: Yes. So -- yes, I believe to S5, S6,  
20 S7, and S8.

21 ALJ STERN: Wait a minute.

22 S5, 6, 7, and you said 8 --

23 MR. HUYNH: And --

24 ALJ STERN: -- are part of your stipulation?

25 MR. HUYNH: Yes.

1 ALJ STERN: All right. Exhibits S5, 6, 7, and 8  
2 are admitted.

3 (Exhibit Nos. S5 through S8 are admitted  
4 into evidence.)

5 ALJ STERN: Now, what about S9? No, that's not  
6 in.

7 MR. HUYNH: No.

8 ALJ STERN: S10 is the certificate of  
9 nonregistration. That is to being dealers or salesmen?

10 MR. HUYNH: Yes.

11 ALJ STERN: You're not stipulating to that?  
12 That's just a certificate from the Commission that says  
13 you're not registered. Assuming these are sec- --  
14 well, what they are alleging is true, that you weren't  
15 registered to sell securities.

16 So you're objecting -- are you stipulating  
17 to that?

18 MR. WEST: Yes.

19 ALJ STERN: All right. S10 will be admitted.

20 (Exhibit S10 was admitted into evidence.)

21 ALJ STERN: How about S11 and S12?

22 So the only ones that are open are S9 and  
23 S4C.

24 Okay. So did I cover all of those? S10 is  
25 admitted and the other ones we have already covered.

1 MR. HUYNH: Right.

2 ALJ STERN: Do you want to call your first  
3 witness?

4 MR. HUYNH: Yes, Judge. The State calls --

5 ALJ STERN: Before you call a witness here, I got  
6 to ask, what's the big issue here? I understand you  
7 think you did nothing wrong. When you were notified,  
8 you stopped doing things, Mr. West, but it seems to me  
9 a case like this would be resolvable, but for possibly  
10 the financial stumbling block that the Division has a  
11 higher value on some of these small cases than possibly  
12 the respondents do. And then there's the issues --  
13 you're alleging fraud, and most people don't want to  
14 have the name fraud associated with their name.

15 So the issue is why isn't this case  
16 resolvable?

17 MR. HUYNH: Judge, we've made multiple attempts  
18 and we could never get any communication back from  
19 Mr. and Mrs. West and, you know, we've attempted  
20 multiple times and contact through faxes and phone  
21 numbers and we've never made any progressive talks and  
22 that's why we're here in front of you today.

23 MRS. WEST: I do --

24 ALJ STERN: Just a minute. I don't want to get  
25 involved in your actual discussions. I just wanted to

1 know if they have actually tried --

2 Do you want a few more minutes to try to  
3 talk to Mr. Huynh about this or not, because --

4 MR. WEST: She was trying to make the point that  
5 what he's saying isn't exactly a hundred percent  
6 correct because we had made a tentative agreement the  
7 last time we were here.

8 ALJ STERN: Let's do this. I'm going to take a  
9 recess. I'll come back in a little bit. If you all  
10 can't work this out between you to arrive at some sort  
11 of an agreement which will resolve this legal  
12 entanglement that you've gotten yourself into, which  
13 sometimes people get into through no fault of their  
14 own, but it's very easy to do this when you start  
15 talking about dollars and cents in a place like the  
16 Internet or in advertisements and newspapers or  
17 wherever people do this. You end up -- because so many  
18 things are defined as what they call securities under  
19 the law, that you got this problem. How you make it go  
20 away is up to you.

21 If you want me to make some sort of a  
22 recommendation to the Commission which consists of five  
23 people who may then decide they want to do things  
24 differently, they have that option to do it. I can't  
25 say what will happen.

1 But, you know, you may be able to work  
2 something out. There are types of agreements where  
3 parties neither admit nor deny anything and it resolves  
4 the issues before the Commission. I don't know whether  
5 that's a type of agreement you had in mind when you  
6 talked with the Division, but I'll give you a few more  
7 minutes because I think there's a possibility this  
8 matter could be resolved if reasonable minds come  
9 together. So I'll give you a few more minutes to talk  
10 about it.

11 We'll go off the record.

12 (A recess was taken from 10:01 a.m. to  
13 10:31 a.m.)

14 ALJ STERN: Returning back to the record.

15 Mr. Huynh, what's the status?

16 MR. HUYNH: Judge, I've had a chance to speak  
17 with Mr. and Mrs. West. What we would request is just  
18 a brief one-hour recess to see if we can resolve the  
19 matter through a consent order. However, if the matter  
20 cannot be resolved because the consent order proposed  
21 is not amenable to them, we would request to continue  
22 with the hearing.

23 ALJ STERN: Okay. We can do that. So why don't  
24 you let me know by 11:30 and then we'll see where  
25 you're at.

1 MR. HUYNH: Sounds good.

2 ALJ STERN: All right. We'll leave these matters  
3 here. We'll recess and then we'll see where we're at.

4 (A recess was taken from 10:32 a.m. to  
5 12:01 p.m.)

6 ALJ STERN: Returning to the record at this time,  
7 Mr. Huynh and Mr. West, have you been able to reach an  
8 agreement?

9 MR. HUYNH: Yes, Judge.

10 MR. WEST: Yes.

11 MR. HUYNH: The parties have reached an agreement  
12 and we have a signed consent order between the parties.  
13 In light of that fact, we would ask to vacate the  
14 hearing today.

15 ALJ STERN: We'll vacate this proceeding at this  
16 time. If the matter is not concluded before the  
17 Commission, Division can request the matter be  
18 rescheduled.

19 MR. HUYNH: Thank you, Judge.

20 ALJ STERN: Thank you.

21 (Whereupon the hearing concluded at 12:02  
22 p.m.)

23

24

25

1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) ss.

3

4

5

6

7

8

I, MICHELLE D. ELAM, Certified Reporter No.  
9 50637 for the State of Arizona, do hereby certify that  
10 the foregoing printed pages constitute a full, true and  
11 accurate transcript of the proceedings had in the  
12 foregoing matter, all done to the best of my skill and  
13 ability.

14

15

16

17

18

19

20

21

22

23

24

25

WITNESS my hand this 1st day of October,  
2009.

*Michelle D. Elam*  
MICHELLE D. ELAM  
Certified Reporter  
Certificate No. 50637